

Modified Scheme 2022

Legal Aid Defense Counsel System

FOR PROVIDING LEGAL AID, ASSISTANCE & REPRESENTATION IN CRIMINAL
MATTERS IN LINE WITH "PUBLIC DEFENDER SYSTEM"

National Legal Services Authority
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1. Introduction

Legal Services Authorities provide legal services to accused/convicts, who are in custody or otherwise coming within the eligibility criteria spelt out in Section 12 of the Legal Services Authorities Act, 1987. Legal Services are being provided at pre-arrest remand, trial and appellate stages in criminal matters. Legal representation is being provided by the Legal Services Authorities in approximately 2 lac criminal cases (trials) at the district level.

During Consideration of the Demands for Grants (2022-23) of the Department of Justice by the DRPSC on Personal, Public Grievances, Law and Justice has also observed in 116th report that:

“NALSA has recently completed 25 years of its establishment; accordingly, it is also the right time to ponder over reforms which are required in NALSA and legal aid movement in India. Majority of Indians are eligible to receive legal aid, but the number of people actually receiving legal aid is a miniscule percentage of those entitled. In the previous chapter, the Committee has already recommended a significant increase in NALSA's budget and expects NALSA to make best use of it in performing its assigned mandate.”

At present, Assigned Counsel System of delivery of Legal Aid is being followed in India. Under the said system, cases are assigned to panel lawyers by Legal Services Institutions. Panel lawyers to whom cases are assigned by the Legal Services Authorities also have private practices, and hence, they do not exclusively devote their time to the legal aided matters. Many times their accessibility and availability remains an issue for timely client consultation and updating legal aid seekers about the progress of their cases. There are few instances, wherein the lawyers found harassing beneficiaries or demanding fee from them. It also comes in the way of effective monitoring of legal aided cases.

The Court based legal services need to be strengthened for providing effective and efficient legal services to weaker and marginalised sections of

society. To achieve the same, several steps have been taken such as capacity building of lawyers, enhancing the structure and effective functioning of monitoring & mentoring committees, upgradation of Front Offices etc.

In the said process of strengthening and making legal services more professional, NALSA adopted a legal aid delivery based model i.e. *Legal aid Defense Counsel System*¹ for providing legal aid in criminal matters on the lines of public defender system on pilot basis for a period of two years.

It is pertinent to mention that in most countries, Legal Aid Delivery Models are combination of the Public Defender System, Assigned Counsel System and Contract Services System. Examples of diverse legal aid delivery systems can be found, among other countries, in Israel, the Republic of Moldova, Sierra Leone, South Africa and the United States of America. A number of jurisdictions have adopted a public defender scheme with offices throughout the country, including Argentina Chile, Georgia, Mexico, Paraguay, Peru, the Philippines, the Republic of Moldova and South Africa¹.

As envisaged, Legal Aid Defense Counsel System involve full time engagement of lawyers with support system. The said unit deals exclusively with legal aid work in criminal matters either in the district or at the HQ, where it is situated. Initially, it was confined to cases before the Sessions, and now it is expanded to Magistrate's courts with Lawyers engaged therein not allowed to take any private cases or any other retainership. The unit has created institutional capacity to effectively provide legal aid to needy in criminal justice system. Some of the perceived advantages of the Legal aid Defense Counsel System vis-à-vis assigned counsel system may be mentioned as follows:

- Increase in Availability and accessibility of Legal Aid Defense counsel,
- Effective and efficient representation by experienced lawyers,

¹ Model Law on Legal Aid in Criminal Justice Systems with Commentaries(www.unodc.org)

- Timely and effective Client Consultations,
- Effective monitoring and mentoring of legal aided cases,
- Professional management of legal aid work in criminal matters,
- Enhanced responsiveness leading to updating of legal aid seekers about the progress of their cases,
- Ensuring accountability on the part of the legal aid providers.

At the first instance, the Legal Aid Defense Counsel System was conceived to be implemented on a pilot project basis for providing legal aid in criminal matters in Sessions Courts in a few districts. After its success as a pilot project, it is being extended to other districts and to Magisterial courts, including executive Magistrates.

Objectives:

- To provide qualitative and competent legal services in criminal matters to eligible persons.
- To manage and implement legal aid system in professional manner in criminal matters.

2. Scope of Work:

Legal Aid Defense Counsel Office shall be dealing exclusively with legal aided matters in criminal matters of the District or HQ, wherein it is established. It shall be providing legal services from the early stages of criminal justice till appellate stage, and the same shall include visits to jails from catering to the legal needs of unrepresented inmates. Initially it shall not be dealing with civil matters and counsel assignment system (Panel Lawyers) will continue to be operational for the purpose. The following end to end legal services shall be provided through the Legal Aid Defense Counsel Office:

- Legal Advice and Assistance to all individuals visiting the office,

- Representation/Conducting trial and appeals including all miscellaneous work in all Sessions, Special and Magistrate Courts including executive courts,
- Handling Remand and Bail work,
- Providing legal assistance at pre-arrest stage as per NALSA's scheme for providing such assistance,
- Any other legal aided work related to District Courts or as assigned by the Secretary DLSA,
- Periodic visit of Prisons of the district under the guidance of the Secretary, DLSA.

3. Infrastructure and Human Resource required in each Project district

• **Infrastructure:**

- Well-appointed office for Legal Aid Defense Counsels with separate cabin for Chief Legal Aid Defense Counsel and space for consultation, as per suggested map.
- Space for ministerial staff, reception with waiting area.
- Computers and printers with scanner, internet connection, telephone.
- Furniture consisting of tables, chairs, bookshelf and almirahs etc.

• **Human Resource:**

Human Resources for a Legal Aid Defense Counsel Office		
S. No.		No. required
1.	Chief Legal Aid Defense Counsel	01
2.	Deputy Chief Legal Aid Defense Counsel	01-03 ✓
3.	Assistant Legal Aid Defense Counsel	02-10 ✓
4.	Office Assistants/ Clerks	01-03
5.	Receptionist-cum-Data Entry Operator (Typist)	01 (optional)
6.	Office peon (Munshi/Attendant)	01

Note : Number of Deputy and Assistant Legal aid Defense Counsel may be increased or decreased as per the requirement in individual districts, subject to prior approval of Hon 'ble Executive Chairman, SLSA. Number of Legal Aid Defense Counsel shall be proportionate to the actual work and also requirement.

4. Selection Procedure:

After due publicity including public notice, applications must be invited and a fair, transparent and competitive selection process should be adopted by DLSA. Legal Aid Defence Counsels shall be engaged on contract basis in each place/district initially for a period of two years with a stipulation of extension on yearly basis on satisfactory performance. Selection of Chief Legal Aid Defense Counsel, Deputy Chief Legal Aid Defense Counsel, Assistant Legal Aid Defense Counsel will be based on merit, taking into account the knowledge, skills, practice and experience of candidates. The selection shall be carried out by Selection committee under the Chairmanship of the Principal District & Sessions Judge (Chairman, DLSA) as envisaged in NALSA (Free and Competent Legal Services) Regulations 2010, subject to final approval by the Executive Chairman, SLSA. The suggestive eligibility criterions are as follows:-

a) Qualifications for Chief Legal Aid Defense Counsel:

- Practice in Criminal law for at least 10 years,
- Excellent oral and written communication skills,
- Excellent understanding of criminal law,
- Thorough understanding of ethical duties of a defence counsel,
- Ability to work effectively and efficiently with others with capability to lead,
- Must have handled at least 30 criminal trials in Sessions Courts,
- Knowledge of computer system, preferable.

d) Qualifications for Deputy Chief Legal Aid Defense Counsel:

- Practice in Criminal law for at least 7 years,
- Excellent understanding of criminal law,
- Excellent oral and written communication skills,
- Skill in legal research,
- Thorough understanding of ethical duties of defence counsel,
- Ability to work effectively and efficiently with others,
- Must have handled at least 20 criminal trials in Sessions Courts,
- IT Knowledge with proficiency in work.

e) Qualification for Assistant Legal Aid Defense Counsel:

- Practice in criminal law from 1 to 3 years.
- Good oral and written communication skills.
- Thorough understanding of ethical duties of defence counsel.
- Ability to work effectively and efficiently with others.
- Excellent writing and research skills.
- IT Knowledge with proficiency in work.

d) Qualification for Office Assistant/ Clerks:

- Educational Qualification: Graduation,
- Basic word processing skills and the ability to operate computer,
- Typing speed of 40 WPM,
- Ability to take dictation and entering data,
- File maintenance and processing knowledge.

e) Qualification for Receptionist-cum-Data Entry Operator

- Educational Qualification: Graduation,
- Excellent verbal and written communication skills,
- Word processing abilities,
- The ability to work telecommunication systems (telephones, fax machines, switchboards etc).

- Proficiency with good typing speed.

Qualifications may be reasonably relaxed in case of exceptional candidates or circumstances with the approval of the Executive Chairman SLSA.

5. Work Profiles :

a) Chief Legal Aid Defense Counsel

- Conducting trials and appeals and bail matters in courts along with deputy chief legal Aid Defense Counsel
- Assigning duties of Deputy chief legal Aid Defense Counsel
- Assigning duties of Assistant legal Aid Defence Counsel for assisting him and Deputy Chief legal Aid Defense Counsel and for legal research.
- Ensure proper legal research, planning effective defence strategy and thorough preparation in each and every legal aided case.
- Ensure maintenance of complete files of legal aid seekers.
- Ensure proper documentation with regard to legal aid assistance provided, ensure maintaining of up to date record of legal aided cases.
- Will be overall in charge of administration the office of Legal Aid Defense Counsel Office.
- Ensure quality of legal aid.
- Any work/duty assigned by Legal Services Authority

b) Deputy Chief Legal Aid Defense Counsel.

- Conducting trials/ appeals/ Remand work /Bail applications as assigned by Chief Legal Aid Defense Counsel.
- Filing and arguing appeals and bail applications in Courts.
- Maintaining complete case files.

- Doing legal research in legal aided cases and guiding assistant legal Aid Defense Counsel and law students attached with the office in legal research.
- Proper client interviews at various stages for quality research work and representation at remand, trial and appellate stage.
- Any work/duty assigned by Legal Services Authority.

c) Assistant Legal Aid Defense Counsel.

- Conducting legal research in legal aided cases.
- Visits to Jail Clinics twice in a week
- Providing assistance at pre-arrest stage to suspects.
- Assisting Chief Legal Aid Defense Counsel and Deputy Legal Aid. Defense Counsel in conduct of legal aided cases.
- Assisting in developing a defence strategy after sifting through all of the evidence collected by the prosecution and after hearing the accused's version of what happened during the alleged crime in question.
- Visiting location/area of alleged crime; having discussions with family members etc , for effective and meaningful input for defense strategy.
- Handling queries of legal aid seekers.
- Updating legal aid seekers about the progress of their cases.
- Assisting in maintaining complete files of legal aided cases.
- Handling legal queries relating to criminal matters on telephone.
- Any other work related to legal aid assigned by Chief Legal Aid Defense Counsel.
- Any work/duty assigned by Legal Services Authority.

d) Office Assistant

- Keeping updated record of legal aided cases.

- Uploading the updated record/progress of the legal aided cases on NALSA portal.
- Maintaining complete files of legal aided cases and keeping files with proper index in a systematic manner.
- Typing bail applications, petitions, etc.
- Doing ministerial work related to cases such as filing applications for copies of orders, judgement etc.
- Any other task assigned by the Chief Legal Aid Defense Counsel.
- Any work/duty assigned by Legal Services Authority.

e) Receptionist-cum-Data Entry Operator

- Greeting clients and visitors and answering visitor inquiries.
- Answering and routing incoming calls on a multi-line telephone system.
- Scheduling and routing legal aid seekers.
- Maintaining the waiting area, lobby or other office areas.
- Scanning, photocopying, faxing.
- Collecting and routing mail and hand-delivered packages.
- Answering face-to-face enquiries and providing information when required.
- Uploading, at the initial point, legal aided cases on NALSA portal and updating the information from time to time.
- Any work/duty assigned by Legal Services Authority.

f) Office peon (Munshi/Attendant)

- Cleaning the office before the commencement of office hours.
- Ensuring that all places in the office are kept clean.
- Bringing and serving water, beverages to the visitors in the office.
- Carrying dak etc.
- Any other work assigned by Legal Services Authority.

6. Termination of Services:

Services of any human resource/staff including legal aid defense counsel engaged in the office of Legal Aid Defense Counsel can be terminated at any time, without any prior notice in the following cases:

- i. He/she substantially breaches any duty or service required in the office.
- ii. Seeks or accepts any pecuniary gains from the legal aid seekers or beneficiary or his friend or relative.
- iii. Charged or Convicted for any offence.
- iv. Indulges in any type of political activities.
- v. Found incapable of rendering professional services of the required standards.
- vi. Failure to attend training programmes without any sufficient cause.
- vii. Indulges in activities prejudicial to the working of legal aid defense counsel office.
- viii. Using his/her position in legal aid defense counsel office to secure unwarranted privileges or advantages for him/herself or others.
- ix. Acts in breach of code of ethics.
- x. Remains absent without leave for more than two weeks.

7. Code of Ethics:

Personnel engaged in the office of Legal Aid Defense Counsel shall observe the following code of ethics:

- No personnel shall act in any matter in which he/she has a direct or indirect personal or financial interest.
- No personnel shall wilfully disclose or use, whether or not for the purpose of pecuniary gain, any information that he/she obtained, received or acquired during the fulfilment of his/her official duties and which is not available to members of the general public.

- No personnel within the office of Legal Aid Defense Counsel shall make use of his/her office or employment for the purpose of promoting or advertising any outside activity.
- No personnel within the office of Legal Aid Defense Counsel shall engage in any outside activity or act as an independent practitioner.
- No personnel within the office of Legal Aid Defense Counsel shall solicit, agree to accept or accept, whether directly or indirectly, any gift, favour, service, or other thing of value under circumstances from which it might be reasonably inferred that such gift, service, or other thing of value was given or offered for the purpose of influencing him/her in, or rewarding him/her for, the discharge of his/her official duties.
- Legal Aid Defense Counsel shall devote his/her full time to his/her duties for the office of Legal Aid Defense Counsel and shall not engage in private practice of law during the term of employment.
- Every Personnel of the office of Legal Aid Defense Counsel shall strive to preserve the public's confidence in the office's fair and impartial execution of its duties and responsibilities.
- Legal Aid Defense Counsel shall also follow the code of ethics prescribed by Bar Council of India for lawyers.

8. Entitlement to Leave:

- Chief Legal Aid Defense Counsel and Deputy Legal Aid Defense shall be eligible for 15 days' leave in a calendar year on pro-rata basis.
- Assistant Counsel Legal Aid Defense Counsel and other staff shall be eligible for 12 days' leave in a calendar year on pro-rata basis.
- No remuneration for the period of absence in excess of the admissible leave will be paid to the human resource of Legal Aid Defense Counsel

Office. Un-availed leave shall neither be carried forward to next year nor encashed.

9. **Role of State Legal Services Authority and District Legal Services Authority**

- Office space planning, and providing infrastructure for office preferably inside or in proximity to court complex.
- Providing Office furniture.
- Providing Office equipment, including computer, printer, net connectivity and other n equipment.
- Purchasing office supplies.
- Engaging human resource requirement for Legal aid Counsel System Office.
- Ensuring proper functioning of Legal aid Counsel System Office.
- Ensuring effective monitoring and mentoring.
- Periodical evaluation of legal services delivered through Legal aid Counsel System Office.
- Regular trainings and refresher courses for legal aid counsel engaged in Legal aid Counsel System Office.
- Renovation of office space when necessary.
- Providing Books such as Bare Acts and Commentaries for Legal Aid Defense Counsel Office
- Providing Legal Research Software.
- Timely payment of monthly honorarium to legal aid counsel and all staff engaged for Legal aid defense counsel office
- Payment with regard to expert witnesses, if their services are taken
- Payment for expenses incidental to legal aid provided through office such as travelling expenses etc.

- Information/promotional campaigns/programmes with regard to Legal aid Defense counsel office.

10. Engagement with law schools

Law schools often send their students to legal Services Institutions for internship. Moreover, Clinics of Law Colleges also collaborate with Legal Services Institutions.

Law students can be engaged with the Legal Aid Defense Counsel office as to give them meaningful exposure to practical aspects of criminal law including preparing a defense strategy and doing legal research in various factual scenarios. Law students may be so engaged in the following areas in Legal aid defense counsel office:

- Legal research in criminal cases
- Visiting scenes of crimes
- Interviewing accused and their family members and other relevant persons
- Assist in sifting through all of the evidence collected by the prosecution and providing effective input for preparing defense strategy.

The law students so engaged may also be paid stipend by the Legal Services Authorities. Stipend amount may be determined by the Executive Chairman of SLSA and the internship can be offered for a period upto 3 months.

11. Monitoring and Evaluation

- Monitoring and Mentoring Committee shall monitor legal aid work of Legal Aid Defense Counsel Office.
- Monitoring shall be continuous process.

12. Financial Outlay

Finances will primarily be required for hiring premises for Legal aid defense office, in case existing infrastructure of DLSA is insufficient to accommodate it. Finances will be required for office furniture and equipment, monthly salaries, expenses incidental to litigation and other administrative expenses such as postal, stationary etc. Estimated outlay is given below:

A. Salaries

1.	Monthly salary of a Chief Legal Aid Defense Counsel	₹ 60,000 to 1,00,000/-
2.	Monthly salary of two Deputy Chief Legal Aid Defense Counsel	₹ 40,000 to 75,000/- each
3.	Monthly salary of two Assistant Legal Aid Defense Counsel	₹ 25,000 to 40,000/- each
4.	Monthly salary of two Office Assistants	₹ 12,000 to 20,000/- each
5.	Monthly salary of Receptionist-cum-Data Entry Operator	₹ 12,000 to 15,000/-
6.	Monthly salary of Office peon	₹ 10,000 to 15,000/-

B. Infrastructure expenditure (If already not available)

1.	Four to six Computers (50% all in one)	2,50,000/-
2.	Three Printers (one of them would be photocopier & scanner)	1,00,000/-
3.	Furniture (as per need)	2,50,000/-
4.	Books/ law software	1,00,000/-
5.	Facilities/utility items	25,000/-

C. Miscellaneous expenses per month as per the requirement subject to the following cap

1.	Office supplies/stationary	10,000/-
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2.	Postal, internet, phone and other misc. expenses	5,000/-
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